REMARKS

The Examiner is requiring restriction to one of the following groups:

Group I: Claims 1-2 and 4-5, drawn to a pretreatment kit comprising sodium hydroxide, tartaric acid and a nonionic surface active agent, and method for saliva in the identification and quantification of *Streptococci mutans*;

Group II: Claims 6-7, drawn to a method for saliva in the identification and quantification of *Streptococci mutans*, comprising sodium hydroxide, tartaric acid and a nonionic surface active agent in an amount of 5 to 25% by weight;

Group III: Claims 8-9, drawn to a method for saliva in the identification and quantification of *Streptococci mutans*, comprising sodium hydroxide, tartaric acid in an amount of 5 to 25% by weight, and a nonionic surface active agent; and

Group IV: Claims 3-5, 10-11, drawn to a pretreatment kit comprising sodium hydroxide, tartaric acid, a nonionic surface active agent and tris(hydroxymethyl) aminomethane and a pretreatment method for saliva in the identification and quantification of *Streptococci mutans*.

Applicant has elected Group I, claims 1-2 and 4-5, with traverse.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctness (M.P.E.P. § 803). Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not carried the burden of providing sufficient reason and/or examples to support any conclusion that the claims of the restricted groups are patentably distinct.

The Examiner has categorized the relationships between Groups I, II, III, and IV as distinct methods, i.e., unrelated. Patentable distinctness may be shown if different groups are

not disclosed as capable of use together, and have different modes of operation, different functions or different effects. (M.P.E.P § 806.04; M.P.E.P § 808.01). The Examiner asserts that the inventions are unrelated because, *inter alia*, the specification recites that the methods are separate and distinct, each method has a different mode of operation, and each method uses a structurally and functionally different material. The Examiner also asserts that the searching the groups would impose a serious burden because of their different classifications.

The Examiner's assertions, however, do not meet the requirements under M.P.E.P §§ 806.04 & 808.01 or demonstrate evidence of a serious burden, since the inventions relation of the inventions would not impose a serious undue burden on examination. As shown in the Restriction Requirement, at least two of the groups are classifiable in the same class and subclass (i.e., Groups I and II are classified in class 436, subclass 825). Moreover, Applicant notes that claims 6 (Group II) and 8 (Group III) relate to a pretreatment method using the components of the pretreatment kit of claim 1, and claims 7 (Group II) and 9 (Group III) relate to a pretreatment method using the components of the pretreatment kit of claim 2 (Group I). As such, a search of the inventions would necessarily overlap.

Accordingly, for at least the reasons presented above, Applicant submits that the Examiner has not met the burden necessary to sustain the restriction requirement. Withdrawal of the requirement is respectfully requested.

Respectfully submitted,

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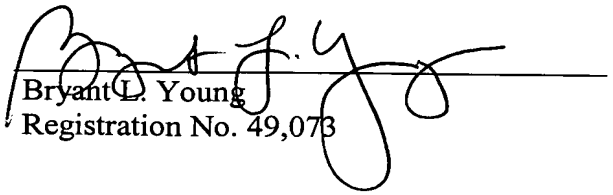

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